

**Property Factor Enforcement Order made under Section 19(2)(a) of the  
Property Factors (Scotland) Act 2011**

Ref: HOHP/PF/14/0203

Re: Property at 23 Scotsraig Apartments, Boat Road, Newport-on-Tay,  
Fife, DD6 8EU ("the Property")

Parties: Mr William Docherty residing at 23 Scotsraig Apartments, Boat Road,  
Newport-on-Tay, Fife, DD6 8EU ("the Homeowner")

Sheltered Housing Management Ltd, a company incorporated under  
the Companies Acts and having their registered office at 13 Ward  
Road, Dundee ("the Factor")

The Committee hereby makes the following Property Factor Enforcement Order  
("PFEO"):

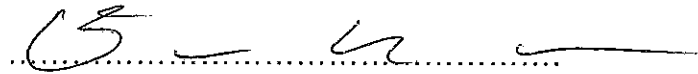
1. Within 3 months from the date of communication to the Factor of this PFEO,  
the Factor must:
  - a. Produce termination accounts following the termination of the Factor's  
appointment on 30 April 2014 compliant with the terms of Section 3.1 of the  
Code of Conduct for Property Factors. The said termination accounts must  
be provided to the Homeowner.
  - b. Produce annual accounts for the period of the Factor's appointment  
following their registration as Factor on 13 March 2013. The said  
termination accounts must be provided to the Homeowner.
  - c. Should the Factor so elect, the Committee do not object if the Factor wishes  
to produce one consolidated set of accounts for the period from 13 March  
2013 to 30 April 2014 to comply with the obligations set out and (a) and (b)  
above. The said consolidated accounts must be provided to the Homeowner.

**Failure to comply with a Property Factor Enforcement Order may have serious  
consequences and may constitute an offence.**

**Appeals**

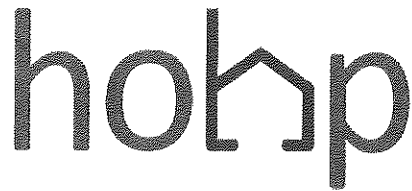
The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding  
their right to appeal and the time limit for doing so. It provides:

"...(1) an appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee; (2) an appeal under sub-section (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."



Ewan K Miller  
Chairman

Date: 2/10/2015.



**Decision of the Homeowner Housing Committee issued under Section 17 of the Property Factors (Scotland) Act 2011**

Ref: HOHP/PF/14/0203

Re: 23 Scotsraig Apartments, Boat Road, Newport-on-Tay, Fife, DD6 8EU ("the Property")

Parties: Mr William Docherty residing at 23 Scotsraig Apartments, Boat Road, Newport-on-Tay, Fife, DD6 8EU ("the Homeowner")

Sheltered Housing Management Ltd, a Company incorporated under the Companies Acts and having their Registered Office at 13 Ward Road, Dundee ("the Factor")

**Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011 ('the Act')**

**Committee members:**

Ewan K Miller (Chairperson and Legal Member); Sara Hesp (Surveyor Member); and Carolyn Hirst (Housing Member).

**Decision**

1. The Committee has decided to issue a Property Factor Enforcement Order ("PFEO"). The terms of the PFEO are stated as below and are unaltered since the issue of the draft PFEO to the parties for comment.
2. The Decision is unanimous.

**Reasons for Decision**

3. We have given consideration to the correspondence received from the parties since the issue of the Committee's original Decision and proposed PFEO. In particular we have considered the Homeowner's letters of 13 and 27 July 2015 and the Factor's solicitor's representations of 22 July 2015.
4. The Homeowner has asked for clarification in relation to the Accounts to be produced that are required by the PFEO. The Homeowner, in his application, had requested for "a full and validated statement of account for the period requested". The Committee considered this point and took the view it is not

appropriate for it to order the Factor to produce accounts that are to any other standard than is required by the Code, as per the original wording of the PFEO. The Committee would, however, expect these to show a reasonable degree of detail in order that the Homeowner can ascertain the individual items of expenditure and to whom sums have been paid in respect of works carried out. The Committee was satisfied that the proposed wording in the PFEO was appropriate.

5. The Homeowner took the view that the Committee's decision in respect of Section 3.2 of the Code was incorrect and that the Factor had breached this. The Homeowner highlighted two previous sets of accounts which indicated that there was a surplus or deficit in the accounts each year and that there was a set amount for a management charge rather than it being any balance left. The Factor did therefore, in the Homeowner's submission, hold funds for homeowners. The Committee did not agree with this. The Committee noted the decision of Lord Nimmo Smith in *Sheltered Housing Management Limited -v- Cairns*, as referred to in the Decision and paragraph 4 thereof. This highlighted the unique nature of the manner in which the Factor operated. The Committee was satisfied that Section 3.2 of the Code had not been breached. In any event, it was not for the Committee to change its decision based on post hearing representations. Either party could have appealed the decision had they wished to.
6. The Factor's solicitor had indicated that the Factor would be prepared to comply with the terms of the draft PFEO on a voluntary basis. They requested a period of 12 weeks for voluntary compliance. This would prevent an Order being made against their client.
7. The Committee did not consider this an appropriate suggestion. Firstly the Committee noted that the Factor had, via his solicitors, previously indicated that they would be producing accounts (see letter of 27 August 2013) but had failed to do so. It was therefore not appropriate to allow a voluntary period for production of accounts.
8. The Committee was of the view that it was appropriate to issue a PFEO. Decisions and PFEO's determined by Committees are made publicly available. The issue of a PFEO is a matter which is of public interest. The publication of a PFEO clearly signals to the parties and to outside observers, including those involved in the regulation of factors, the results of a case. Although there may be limited circumstances in which it may be appropriate for a Committee not to issue a PFEO, the Committee considered that it would be unfortunate if a practice were to develop whereby factors who are the subject of adverse decisions routinely avoid the publishing of PFEOs against their name by complying with draft PFEOs before they are ever issued in their final form. A Committee should not assist such a practice by giving a voluntary period for a factor to achieve this.
9. Accordingly the Committee was satisfied that it was appropriate to issue the PFEO in its original terms.

**Appeals**

*The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides*

*"(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee. (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made ... "*

Ewan Miller

Chairperson Signature ....

Date 2.10.2015